

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY,)
)
Plaintiff,)
)
v.) Civil Action No. 3:06-cv-977-MEF
)
MANIFOLD CONSTRUCTION, LLC, et al.,)
)
Defendants.)

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as "Whittelsey"), and in support of their motion to strike Plaintiff's response to reply brief (Doc. #41) file this brief.

INTRODUCTION

On the 10th day of September, 2007, Whittelsey filed their motion to dismiss or, in the alternative, motion to stay proceedings or, in the second alternative, motion for protective order or, in the third alternative, motion to set discovery conference (Doc. #34). On the 13th day of September, 2007, this Honorable Court issued its order (Doc. #36) directing Plaintiff to respond to Whittelsey's motion "on or before September 20, 2007." (Doc. #36, ¶ 1). Said order further allowed Whittelsey to file a reply on or before September 24, 2007. On the 21st day of September, 2007, Plaintiff filed its reply memorandum and memorandum in support of motion to compel. (Doc. #39). On the 24th day of September, 2007, Whittelsey filed its reply brief. (Doc. #40). On the 25th day of September, 2007, Plaintiff filed a response to Whittelsey's reply brief. (Doc. #41).

STANDARD OF REVIEW

The grant or denial of a motion to strike pursuant to Fed.R.Civ.P. Rule 12(f) is discretionary. *Brochu v. City of Riviera Beach*, 304 F.3d 1144, 1155 (11th Cir. 2002).

ARGUMENT

Pursuant to Fed.R.Civ.P. Rule 12(f), upon motion of a party, this Honorable Court may strike a portion of a pleading for various reasons including redundant, immaterial or impertinent matters. Plaintiff filed an initial response beyond the time allowed by this Honorable Court's order (Doc. #36). Plaintiff's additional response (Doc. #41) offers nothing new, it is redundant, immaterial and/or impertinent. Furthermore, Plaintiff's additional response was filed outside of the permission of this Honorable Court. Plaintiff's additional response should be stricken.

WHEREFORE, Whittelsey prays this Honorable Court will strike the entirety of Plaintiff's additional response (Doc. #41) or, in the alternative, allow Whittelsey additional time to respond to said additional response.

Respectfully submitted this the 25th day of September, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 25th day of September, 2007.

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